

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID GUERRA,

Petitioner,

v.

O. SMITH,

Respondent.

No. 2:23-cv-1048 DAD CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition is fully briefed. Petitioner asks that the court stay this matter pursuant to Rhines v. Weber, 544 U.S. 269 (2005) so that petitioner can present an additional claim in California courts which he would raise here if denied. Respondent opposes the request for a stay.

To obtain a stay under Rhines, petitioner must show (1) good cause for his failure to previously exhaust state court remedies, and (2) any unexhausted claim is potentially meritorious. Rhines, 544 U.S. at 278. The claim petitioner seeks to potentially add concerns his being offered a plea agreement. Petitioner alleges that during trial proceedings he was offered a prison sentence of 8 years. Petitioner claims he rejected the offer not knowing the range of sentences he could receive following a trial. He blames trial counsel for not informing him about the range of sentences.

1 Petitioner has not shown good cause for not exhausting this claim earlier. Even
2 considering plaintiff's asserted difficulty with English and his low level of education, petitioner
3 was aware at his original sentencing, June 11, 2018 (ECF No. 10-13 at 7-10), that he rejected a
4 plea deal for significantly less prison time than what he received. Any potential claim for
5 ineffective assistance of counsel based upon counsel either advising petitioner not to take the plea
6 or because counsel did not provide plaintiff with adequate information was obvious after
7 sentencing. Petitioner was resentenced on May 17, 2022. After resentencing, petitioner was free
8 to raise any claim related to the rejected plea agreement in state court. It does not appear
9 petitioner took any action following resentencing until filing this action in June 2023. Petitioner
10 fails to point to anything suggesting his failure to do so until now was for good cause.

11 For the foregoing reasons, the court will recommend that petitioner's motion for a stay
12 under Rhines be denied.

13 In accordance with the above, IT IS HEREBY RECOMMENDED that petitioner's motion
14 for a stay under Rhines v. Weber, 544 U.S. 269 (2005) (ECF No. 15) be denied.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Any response to the objections shall be
19 served and filed within fourteen days after service of the objections. The parties are advised that
20 failure to file objections within the specified time may waive the right to appeal the District
21 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: October 14, 2025

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24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE